Volume 28 | Number 16 Article 2

8-11-2017

Cases, Regulations and Statutes

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private letter ruling,[2] the decedent's will was revealed and stated that, at the time of termination of the trust, the trustees were to partition (or have the properties judicially partitioned) between and among the heirs. The plan of termination allowed for the beneficiaries to request the type of assets that would be distributed to them at the time of termination of the trust with the distributions made on a *pro rata* basis. In that particular situation, a state statute made it clear that distributions did not have to be *pro rata*. In that state, distributions with statutory provisions were applicable to trusts with a *situs* in the state.

An earlier IRS ruling[3] had taken the position that if neither the trust instrument nor local law authorizes the trustee to make *non-pro rata* distributions of property in kind, the distribution is treated as a sale or exchange even though there is a mutual agreement between or among the beneficiaries as to the plan of distribution. A 1981 ruling added a warning that where a federal statute specifies that gain must be recognized, that takes the matter out of the realm of state law and gain (or loss) must be recognized.[4]

What this adds up to is this – unless the federal statute in question specifically requires recognition of gain or loss, if there is a state law provision permitting *non-pro rata* distribution, exercise of that authority does not result in the recognition of gain or loss to the beneficiaries.[5]

Specific bequests

Another alternative is for the parents simply to make the decisions on who is to receive which property after the deaths of the parents and specify that outcome in the will or trust. That usually avoids the tax aspects of the division of the property after death but it may result in criticism of the parents' decisions. That aspect often weighs heavily on the parents to the point that they end up preferring for someone else to make those decisions.

END NOTES

[1] See Harl, "More on Related-Party Like Kind Exchanges," 20 *Agric. L. Dig*. 129 (2009); Harl, "Partition and the Related Party Rule," 13 *Agric. L. Dig*. 145 (2002); Harl, "Income Tax Consequences on Partition and Sale of Land," 11 *Agric. L. Dig*. 113 (2000).

[2] See Ltr. Rul. 20334030, May 19, 2003.

[3] Rev. Rul. 1969-486, 1969-2 C.B. 159.

[4] Rev. Rul. 83-61, 1983-1 C.B. 78 (that provision involved interpretation of tax-free or nearly tax-free corporate liquidation which was repealed in 1986).

[5] Rev. Rul. 1983-61, 1983-1 C.B. 78; Ltr. Rul. 200334030, May 19, 2003.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

ANIMALS

ANIMAL ABUSE. The decedent was arrested and charged with 39 accounts of animal abuse in February 2014 and the decedent's cattle were seized and placed in the care of the county. The decedent died before a criminal case could be brought against the decedent. At the death of the decedent, the charges were dismissed. The county had incurred costs for the maintenance of the cattle and filed a claim against the decedent's estate for recovery of those costs. The county argued that, under the doctrine of unjust enrichment, it is entitled to recover the costs of maintaining the decedent's animals. The elements of unjust enrichment are: (1) another party was enriched; (2) at the plaintiff's expense; and (3) that it is against equity and good conscience to permit the other party to retain what is sought to be recovered. Thus, the court reasoned that, if the decedent had been convicted of animal abuse, it would be against equity and good conscience not to allow the county to recover the costs. However, New York Agriculture and Markets Law § 373(6)(c) provides, in relevant part: "The person who posted the security [for seized animals] shall be entitled to a full refund of security, including reimbursement by the impounding organization of any amount allowed by the court to be expended, and the return of the animal seized and impounded upon acquittal or dismissal of the charges, except where the dismissal is based upon an adjournment in contemplation of dismissal . . .." The court held that, because the criminal charges were dismissed, the statute provided that the decedent's estate was not liable for any costs of the seizure and maintenance of the cattle because the estate would be entitled to a refund if the decedent had been required to pay any security for such costs. **Matter of Clinton County, 2017 N.Y. Misc. LEXIS 2574 (N.Y. Sur. Ct. 2017)**.

BANKRUPTCY

FEDERAL TAX

DISCHARGE. The debtor and spouse had owned and operated a series of fraudulent vacation clubs where the debtor received dues but failed to provide the vacation benefits promised. The debtor pled guilty to a charge of theft by deception during 2009-2011. The debtor filed erroneous tax returns in 2009 and 2010, omitting much of the income received from the fraudulent operations. In 2015, the debtor filed for Chapter 7 and sought to discharge the unpaid taxes assessed for 2009 and 2010. The IRS argued that the taxes were nondischargeable under Section 523(a)(1)(C) for failure to report all income in 2009 and 2010. The debtor argued that the taxes were dischargeable because the debtor had no intent to file a fraudulent return or evade payment of taxes. The court noted that direct proof of fraud is rarely available; therefore, fraud is most often demonstrated by circumstantial evidence. Courts have identified certain "badges of fraud" which serve as circumstantial evidence, such as: "large understatements of income made consistently over time; failure to keep adequate records; failure to file tax returns; implausible or inconsistent behavior by the taxpayer; concealing assets; failure to cooperate with taxing authorities." Additional factors may indicate fraud include: the illegality of the activity generating the additional unreported income as well as the relative sophistication of the debtor. The court held that the taxes were nondischargeable under Section 523(a)(1)(C) because (1) although the debtor eventually produced some records, the debtor failed to timely produce documents requested by the IRS to support the 2009 and 2010 returns; (2) the debtor failed to otherwise truthfully comply with the IRS requests for other information; (3) the taxes resulted from illegal business operations; and (4) the debtor was a sophisticated business owner and operator who knew of the obligation to file complete and accurate returns. In addition, the court held that the failure to include illegal income in the reported income on the 2009 and 2010 returns was a willful attempt to evade payment of taxes, also supporting the nondischargeability of the taxes involved. ***In re* Bernstein, 2017-2 U.S. Tax Cas. (CCH) ¶ 50,290 (Bankr. D. N.J. 2017)**.

FEDERAL ESTATE AND GIFT TAXATION

GIFTS. The taxpayer made gifts in each of six tax years but did not file Form 709 returns for the gifts. In the seventh year, the taxpayer made another gift and filed a gift tax return but did not identify the property or provide any information as to the method used to determine the property's value. Under I.R.C. § 6501(a), the amount of any internal revenue tax shall generally be assessed within three years after the return was filed. An exception in I.R.C. § 6501(c)(9) applies to the tax on a gift not adequately disclosed on a gift tax return on which it was required to be reported. If a transfer of property is not adequately disclosed on a gift tax return, or in a statement attached to the return, filed for the calendar period in which the transfer occurs, then any gift tax on the transfer may be assessed, or a proceeding in court for the collection of the appropriate tax may begin without assessment, at any time. See also Treas. Reg. § 301.6501(c)-1(f)(1). If no return was filed, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time. I.R.C. § 6501(c)(3). A gift is not adequately disclosed unless it is "reported in a manner adequate to apprise the IRS of the nature of the gift and the basis for the value so reported." See Treas. Reg. §301.6501(c)-1(f)(2). A gift is adequately disclosed if the gift tax return reports certain information, including a description of the transferred property and any consideration received by the transferor, and a detailed description of the method used to determine the fair market value of the gift. In this case, the IRS ruled that the statute of limitations for assessment of all seven gifts has not expired. The IRS noted that the taxpayer may start the running of the limitations period by filing complete and accurate returns for all seven years. **F.A.A. 20172801F, July 18, 2017.**

PORTABILITY. The decedent died, survived by a spouse, on a date after the effective date of the amendment of I.R.C. § 2010(c), which provides for portability of a "deceased spousal unused exclusion" (DSUE) amount to a surviving spouse. The decedent's estate did not file a timely Form 706 to make the portability election. The estate discovered its failure to elect portability after the due date for making the election. The estate represented that the value of the decedent's gross estate was less than the basic exclusion amount in the year of the decedent's death including any taxable gifts made by the decedent. The IRS granted the estate an extension of time to file Form 706 with the election. **Ltr. Rul. 201729004, March 7, 2017; Ltr. Rul. 201729005, March 9, 2017; Ltr. Rul. 201729006, March 15, 2017; Ltr. Rul. 201729010, March 27, 2017; Ltr. Rul. 201729017, March 24, 2017.**

FEDERAL INCOME TAXATION

ACCOUNTING METHOD. The taxpayer was an LLC which elected to be treated as a partnership for federal tax purposes. The taxpayer decided to change its methods of accounting for capitalizing costs under I.R.C. § 263A and for accrued bonuses for the taxable year. The changes were to be made by the taxpayer and a disregarded entity that was wholly owned by the taxpayer, both of which constituted a single trade or business under I.R.C. § 446(d) and Treas. Reg. § 1.446-1(d). Both accounting method changes were to be made pursuant to the automatic consent procedures of *Rev. Proc. 2015-13, 2015-1 C.B. 419* and *Rev. Proc. 2016-29, 2016-1 C.B. 880*. The taxpayer timely filed Form 7004, *Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns*, which provided the taxpayer an extension to file its U.S. Federal income tax return for the taxable year. The taxpayer hired a CPA to prepare and file its returns and CPA filed the duplicate copy of the Form 3115 with the appropriate office of the Internal Revenue Service pursuant to section 6.03(1)(a)(i) of *Rev. Proc. 2015-13*. However, the CPA failed to file timely both the taxpayer's federal income tax return, as well as the required-to-be-attached original of the taxpayer's Form 3115, due to an error committed by a staff member of CPA. The IRS granted the taxpayer an extension of time to file the return with Form 3115. **Ltr. Rul. 201728019, April 19, 2017**.

ADMINISTRATIVE APPEALS. The IRS Office of Appeals has announced that it will soon pilot a new web-based virtual conference option for taxpayers and their representatives. This virtual face-to-face option will provide an additional option for taxpayer conferences. The IRS expects it to be especially useful for taxpayers located far from an IRS Appeals office. Currently, taxpayers involved in the appeals process can meet with an Appeals Officer by phone, in person or virtually through videoconference technology available only at a limited number of IRS offices. The

Appeals' pilot program will use a secure, web-based screen-sharing platform to connect with taxpayers face-to-face from anywhere they have internet access. Appeals plans to start the pilot Aug. 1, 2017 and will assess the results, including taxpayer satisfaction with the technology. The IRS reminds taxpayers that their right to appeal an IRS decision in an independent forum is one of 10 key rights guaranteed to taxpayers under the Taxpayer Bill of Rights. Other rights especially relevant to the appeals process include the right to quality service, the right to pay no more than the correct amount of tax, the right to challenge the IRS's position and be heard and the right to retain representation. For a complete list of the Taxpayer Bill of Rights, see Publication 1, *Your Rights as a Taxpayer*. **IR-2017-122**.

BUSINESS DEDUCTIONS. The taxpayer worked as an independent contractor providing delivery services. The taxpayer also owned a corporation which provided similar services using the taxpayer as an employee. The corporation owned a delivery truck and leased it to the taxpayer, with the lease providing that the lessee was not to be treated as the owner of the truck. The taxpayer failed to file a tax return and the IRS constructed a substitute for return (SFR) and assessed the taxpayer taxes based on the SFR. The taxpayer sought deductions for repairs, maintenance, regular depreciation and I.R.C. § 179 expense method depreciation for the truck. The court found that the truck was owned by the corporation; therefore, the court held that only the corporation was entitled to claim depreciation deductions for the truck. The taxpayer provided only invoices for the claimed repair and maintenance expenses and the court found that the invoices were insufficient proof that the taxpayer paid any of the expenses or that the costs were incurred for business use of the vehicle. Therefore, the court held that the taxpayer was not entitled to any deductions for repairs or maintenance of the truck. **Drah v. Comm'r, T.C. Memo. 2017-149**.

DEDUCTIONS. The IRS has published information about miscellaneous deductions. *The Two Percent Limit*. Most miscellaneous costs are deductible only if the sum exceeds 2% of the taxpayer's adjusted gross income (AGI). For example, before being able to deduct certain expenses, a taxpayer with $50,000 in AGI must come up with more than $1,000 in miscellaneous deductions. Expenses may include: (1) unreimbursed employee expenses; (2) job search costs for a new job in the same line of work; (3) job tools; (4) union dues; (5) work-related travel and transportation; and (6) the cost paid to prepare a tax return. Tax return fees include the cost paid for tax preparation software and any fee paid for e-filing a return. *Deductions Not Subject to the Limit*. Some deductions are not subject to the 2% limit. They include: (1) Certain casualty and theft losses. In most cases, this rule is for damaged or stolen property held for investment. This may include property such as stocks, bonds and works of art. (2) Gambling losses up to the total of gambling winnings. (3) Losses from Ponzi-type investment schemes. Taxpayers cannot deduct some expenses. For example, personal living or family expenses are not deductible. To claim allowable miscellaneous deductions, taxpayers must use Schedule A, *Itemized Deductions*. For more about this topic, see Publication 529, *Miscellaneous Deductions*. **IRS Summertime Tax Tip 2017-09**.

DISASTER LOSSES. On June 23, 2017, the President determined that certain areas in Tennessee were eligible for assistance from the government under the Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121) as a result of severe storms and flooding which began on May 27, 2017. **FEMA-4320-DR.** On June 26, 2017, the President determined that certain areas in Nebraska were eligible for assistance from the government under the Act as a result of a severe winter storm which began on April 29, 2017. **FEMA-4321-DR.** Accordingly, taxpayers in these areas may deduct the losses on their 2017 or 2016 federal income tax returns. See I.R.C. § 165(i).

EARNED INCOME TAX CREDIT. The IRS has published information about filing an amended return to claim the earned income tax credit (EITC). To qualify for EITC, a taxpayer and spouse, if filing a joint return, must have a Social Security number (SSN) issued by the Social Security Administration that is valid for employment and that is issued before the due date of the tax return including extensions. Any qualifying child listed on the Schedule EIC must also have a SSN that is valid for employment and that is issued before the due date of the tax return including extensions. If the child was born and died during the year, a taxpayer does not need a SSN. Taxpayers cannot use an ITIN, Individual Taxpayer Identification Number or ATIN, Adoption Taxpayer Identification Number, to claim EITC. The Protecting Americans from Tax Hikes (PATH Act), *Pub. L. 114–113, div. Q, 129 Stat. 2241 (2016)*, prevents retroactive claims of the EITC by amending a return or filing an original return for any earlier year in which the individual or anyone listed on the return did not have a SSN valid for employment. Taxpayers cannot claim EITC unless the SSN for the taxpayer, spouse (if married filing a joint return) or a qualifying child is issued before the due date of the return including any valid extensions. **https://www.irs.gov/credits-deductions/individuals/earned-income-tax-credit/social-security-number-and-claiming-eitc**

ENROLLED AGENTS. The IRS has adopted as final regulations increasing the user fee for the special enrollment examination to become an enrolled agent from $11 to $81 for each part of the examination. **82 Fed. Reg. 33009 (July 19, 2017)**.

INNOCENT SPOUSE RELIEF. The taxpayer was a medical doctor and filed joint returns with the taxpayer's spouse for 2004 through 2012. The spouse generally managed the preparation of the tax returns with an accountant. The taxpayer claimed to have not read the tax returns but signed all of them. Before the taxpayer married, the taxpayer knew that the spouse had significant debts. For each joint return, the return listed a tax due, but the taxpayer did not know that the returns were filed without payment of the taxes. The taxpayer sought equitable innocent spouse relief for the taxes for two tax years, 2009 and 2012, attributable to the spouse's income in those years. *Rev. Proc. 2013-34, 2013-2 C.B. 397* provides seven factors to consider in granting equitable innocent spouse relief: (1) marital status; (2) economic hardship if relief is not granted; (3) knowledge or reason to know that the tax liability would not be paid; (4) legal obligation to pay the outstanding income tax liability; (5) receipt of a significant benefit from the unpaid income tax liability; (6) compliance with income tax laws; and (7) mental and physical health. The court found that six of the factors were either neutral or favored equitable relief for the taxpayer; however, the seventh factor, the spouse's reason to know that the taxes would not be paid, overcame the other six factors. The court found that the taxpayer had reason to know that the spouse would not pay the taxes because of the knowledge of the pre-marital debts, the post-return assessments, and the taxpayer's partial payments of the delinquent taxes from 2004 through 2012. **Ryke v. Comm'r, T.C. Memo. 2017-144**.

MEDICAL MARIJUANA. The taxpayer was a family owned corporation which owned and operated a medical marijuana store which was legal under California law. Marijuana could be purchased only with a written recommendation from a physician. The taxpayer claimed various deductions based on expenses incurred in the business but the deductions were disallowed by the IRS under I.R.C. § 280E. I.R.C. § 280E provides in part: "[n]o deduction * * * shall be allowed for any amount paid or incurred during the taxable year in carrying on any trade or business if such trade or business (or the activities which comprise such trade or business) consists of trafficking in controlled substances (within the meaning of schedule I and II of the Controlled Substances Act) which is prohibited by Federal law or the law of any State in which such trade or business is conducted." The Tax Court cited its decision in *Olive v. Comm'r, 2015-2 U.S. Tax Cas. (CCH) ¶ 50,377 (9th Cir. 2015), aff'g, 139 T.C. 19 (2014)* (summarized in 26 *Agric. L. Dig*. 117 (2015)) in holding that I.R.C. § 280E prohibited the deductions for expenses incurred in a business which sold marijuana. On appeal, the taxpayer made legal arguments not raised in the Tax Court case; therefore, the appellate court refused to consider any of those arguments and affirmed the Tax Court. **Canna Care, Inc. v. Comm'r, 2017-2 U.S. Tax Cas. (CCH) ¶ 50,289 (9th Cir. 2017), *aff'g*, T.C. Memo. 2015-206**.

PARTNERSHIPS

ELECTION TO ADJUST BASIS. The taxpayer was a limited liability company which was taxed as a partnership. A member of the taxpayer died during the tax year but the taxpayer failed to make a timely election under I.R.C. § 754 to adjust the partnership basis in partnership property. The IRS granted an extension of time to file an amended return with the election. **Ltr. Rul. 201728015, April 12, 2017**.

The taxpayer was a limited liability company taxed as a partnership. One of the taxpayer's members was an entity. During the tax year, an owner of the member-entity sold its interest interest in the member-entity which resulted in a technical termination of the taxpayer under I.R.C. § 708(b)(1)(B). Although the taxpayer intended to make the I.R.C. § 754 election to adjust its basis in its assets, the taxpayer failed to file the election with its return. The IRS granted an extension of time to file an amended return with the election. **Ltr. Rul. 201729015, April 20, 2017**.

PENSION PLANS. The taxpayer, a CPA, owned a Section 401(k) retirement plan through an employer. In March 2012, the taxpayer borrowed $50,000 from the plan and agreed to semi-monthly payments on the loan. In August 2012, the taxpayer's employment was terminated and the taxpayer stopped making payments on the loan. The plan trustee notified the taxpayer that failure to correct the payment default would result in the remaining loan balance to be treated as a withdrawal, effective Dec. 31, 2012. The taxpayer failed to make any payments and the trustee treated the loan balance as a withdrawal. The trustee filed a Form 1099-R with the IRS and the taxpayer, reporting the withdrawal. The taxpayer claimed that the taxpayer did not receive the Form 1099-R but did admit to receiving a distribution statement from the plan trustee on January 7, 2013. The taxpayer claimed that the distribution statement meant that the distribution was deemed made in 2013. Thus, the taxpayer did not include the loan as taxable income for 2012 and did not report any liability for the 10 percent addition to tax for an early withdrawal from the plan. Under I.R.C. § 72(p)(2)(A)-(C), loans from retirement plans are excepted from tax under I.R.C. § 72(p)(2) if certain requirements are met: (1) the outstanding loan does not exceed a statutorily defined maximum amount; (2) the loan is to be repaid within five years, unless it is a home loan; and (3) except as provided in regulations, the loan has substantially level amortization over the term of the loan with payments not less frequently than quarterly. Failure to make loan payments required by I.R.C. § 72(p)(2)(C), makes the taxpayer ineligible for the exception. See Treas. Reg. § 1.72(p)-1, Q&A-4. Treas. Reg. § 1.72(p)-1, Q&A-10 allows a borrower to cure the default and remain eligible for the exception but the default must be cured before the end of the calendar quarter occurring after the default. Thus, the court held that the taxpayer's plan loan was ineligible for the exception because the taxpayer failed to cure the default by the end of the quarter following the quarter of the default. **Gowen v. Comm'r, T.C. Summary Op. 2017-57**.

SAFE HARBOR INTEREST RATES
August 2017

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	1.29	1.29	1.29	1.29
110 percent AFR	1.43	1.42	1.42	1.42
120 percent AFR	1.56	1.55	1.55	1.55
		Mid-term		
AFR	1.95	1.94	1.94	1.93
110 percent AFR	2.14	2.13	2.12	2.12
120 percent AFR	2.34	2.33	2.32	2.32
		Long-term		
AFR	2.58	2.56	2.55	2.55
110 percent AFR	2.84	2.82	2.81	2.80
120 percent AFR	3.09	3.07	3.06	3.05

Rev. Rul. 2017-15, I.R.B. 2017-32.

SALE OF RESIDENCE. The IRS has published information on the tax aspects of selling a home. *Ownership and Use*. To claim the sale of residence exclusion, the homeowner must meet the ownership and use tests. This means that during the five-year period ending on the date of the sale, the homeowner must have: (1) owned the home for at least two years and (2) lived in the home as their main home for at least two years. *Gain*. If there is a gain from the sale of the main home, the homeowner may be able to exclude up to $250,000 of the gain from income or $500,000 on a joint return in most cases. Homeowners who can exclude all of the gain do not need to report the sale on their tax return. *Loss.* A main home that sells for lower than purchased is not deductible. *Reporting a Sale.* Reporting the sale of a home on a tax return is required if all or part of the gain is not excludable. A sale must also be reported on a tax return if the taxpayer chooses not to claim the exclusion or receives a Form 1099-S, *Proceeds from Real Estate Transactions*. *Possible Exceptions.* There are exceptions to the rules above for persons with a disability, certain members of the military, intelligence community and Peace Corps workers, among others. More information is available in Publication 523, *Selling Your Home*. *Worksheets.* Worksheets are included in Publication 523 to help homeowners figure the (1) adjusted basis of the home sold; (2)gain or loss on the sale; and (3) gain that can be excluded. Taxpayers who own more than one home can only exclude the gain on the sale of their main home. Taxes must paid on the gain from selling any other home. Taxpayers who used the first-time homebuyer credit to purchase their home have special rules that apply to the sale. For more on those rules, see Publication 523. Work-related moving expenses might be deductible, see Publication 521, *Moving Expenses*. Taxpayers moving after the sale of their home should update their address with the IRS and the U.S. Postal Service by filing Form 8822, Change of Address. Taxpayers who purchased health coverage through the Health Insurance Marketplace should notify the Marketplace when moving out of the area covered by the current Marketplace plan. **IRS Summertime Tax Tip 2017-13**.

SALE OF STOCK. The taxpayer bought and sold stock through an online stock broker company which held the stock for the taxpayer. The broker provided customers with a default method of calculating the basis of stock and the resulting gain in trades using the FIFO method, although the broker allowed customers to elect the LIFO method. The taxpayer did not elect the LIFO method. Beginning inn March 2013, the taxpayer purchased a large amount of FNMA stock and generally held the same amount of that stock through 2013 but sold and purchased smaller blocks of FNMA stock throughout 2013. The broker calculated the gain or loss from the trades using the FIFO method and reported the gains and losses to the taxpayer and to the IRS. The taxpayer did not list any of the gains and losses from the trades of FNMA stock in 2013. The IRS assessed a deficiency based on the gains and losses reported by the broker. The court stated that, when taxpayers hold multiple lots or shares of identical stock, they must compute their gains or losses against the basis of those shares actually sold, not the shares the taxpayer intended to sell. Regulations have been promulgated to provide relief for high-volume or high-frequency traders. Under Treas. Reg. § 1.1012-1(c), by default, taxpayers owning blocks of identical stock acquired on different dates or for different prices determine the stocks' basis by using the FIFO method. If a taxpayer can adequately identify the specific shares of stock traded, the regulation permits taxpayers to opt out of the default regime and use the basis correlated to those specifically identified shares. When securities are left in the custody of a broker, as in this case, taxpayers wishing to avoid use of the FIFO method must direct their broker accordingly, and adequately identify the particular shares they wish to sell. Adequate identification, by whatever means made, must be timely in relation to the sale: "no later than the earlier of the settlement date or the time for settlement required by Rule 15c6-1 under the Securities Exchange Act of 1934. In this case, the taxpayer claimed that the taxpayer attempted to change the FIFO method to LIFO using the broker's online access and by telephone but was unable to make the election. The court found that the taxpayer failed to provide sufficient evidence to support this claim and held that the taxpayer did not make the election and was required to report the gain and loss under the brokerage's default FIFO method. **Turan v. Comm'r, T.C. Memo. 2017-141**.

TAX RETURNS. The IRS has published information for taxpayers who need tax transcripts. A transcript summarizes return information and includes Adjusted Gross Income (AGI). They are available for the most current tax year after the IRS has processed the return and for the past three years. When applying for home mortgages or college financial aid, transcripts are often necessary. Mortgage companies, however, normally arrange to get one for a homeowner or potential homeowner. For people applying for college financial aid, see IRS Offers Help to Students, Families to Get Tax Information for Student Financial Aid Applications on IRS.gov for the latest options. Taxpayers can get two types of transcripts from the IRS: *Tax Return Transcript.* A tax return transcript shows most line items including AGI from an original tax return (Form 1040, 1040A or 1040EZ) as filed, along with any forms and schedules. It does not show changes made after the filing of the original return. This transcript is only available for the current tax year and returns processed during the prior three years. A tax return transcript usually meets the needs of lending institutions offering mortgages and student loans. *Tax Account Transcript.* A tax account transcript shows basic data such as return type, marital status, adjusted gross income, taxable income and all payment types. It also shows changes made after the filing of the original return. To get a transcript, taxpayers can: *Order online.* Use the 'Get Transcript' tool available on IRS.gov. There is a link to it under the red TOOLS bar on the front page. Those who use it must authenticate their identity using the Secure Access process. *Order by phone.* The number to call is 800-908-9946. *Order by mail.* Taxpayers complete and send either Form 4506-T or Form 4506T-EZ to the IRS to get one by mail. Use Form 4506-T to request other tax records: tax account transcript, record of account, wage and income and verification of non-filing. Those who need an actual copy of a tax return can get one for the current tax year and as far back as six years. The fee per copy is $50. Complete and mail Form 4506 to request a copy of a tax return. Mail the request to the appropriate IRS office listed on the form. People who live in a federally declared disaster area can get a free copy. *Plan ahead.* Delivery times for online and phone orders typically take five to 10 days from the time the IRS receives the request. Taxpayers should allow 30 days to receive a transcript ordered by mail and 75 days for copies of a tax return. **IRS Tax Tip 2017-11**.

TRAVEL EXPENSES. The taxpayer was employed as a plumber/pipefitter with a contractor. The taxpayer worked on various work sites throughout Mississippi and traveled to and from the work sites and the taxpayer's home each working day. The taxpayer recorded each trip in a daily log and claimed the mileage as an unreimbursed business expense. The employer did not have a reimbursement policy for travel to and from the work sites by its employees. Under I.R.C. § 262(a), expenses incurred for a taxpayer's daily meals and for commuting between the taxpayer's residence and the taxpayer's place of business, are generally nondeductible personal expenses regardless of the distances involved. One exception to this general rule involves commuting to a temporary work location. This exception permits a taxpayer to deduct transportation expenses incurred in traveling between a taxpayer's residence and a temporary work location outside the metropolitan area where the taxpayer normally lives and works. The court found that three of the work sites were not outside the metropolitan area where the taxpayer normally worked and lived because the taxpayer worked on several jobs for the employer in each of these locations. Thus, the court held that the travel expenses were not deductible because they were personal commuting expenses. **Wooten v. Comm'r, T.C. Summary Op. 2017-58**.

UNEMPLOYMENT COMPENSATION. The taxpayer received state unemployment benefits totaling $3,360 from May through August 2012. In August 2012, the state determined that the taxpayer was not entitled to the benefits and requested the return of the money paid. The taxpayer was given until November 2012 to appeal the decision, which the taxpayer did not do. The taxpayer returned the funds in September 2013. The taxpayer did not include the payments in 2012 taxable income and the IRS assessed taxes on that amount. The taxpayer argued that the payments were not taxable because the taxpayer had to return the money. I.R.C. §§ 85(a) and (b) specifically provide for the inclusion of unemployment compensation in gross income, defining the term "unemployment compensation" as "any amount received under a law of the United States or of a State which is in the nature of unemployment compensation." In addition, I.R.C. § 451(a) provides that for a cash basis taxpayer, the amount of any item of gross income shall be included in the gross income for the taxable year in which received by the taxpayer. The court recognized the court-created doctrine of rescission which excludes from taxable income money received under a claim of right if the taxpayer (1) recognizes an existing and fixed obligation to repay the amount received and (2) makes provisions for repayment. See, e.g., *Blagaich v. Comm'r, T.C. Memo. 2016-2*. The court found that the taxpayer failed to provide any evidence that the taxpayer made any provision to repay the unemployment benefits in 2012 and did not make any repayment until late 2013; therefore, the court held that the doctrine of rescission did not apply and the unemployment benefits were taxable in 2012. **Yoklic v. Comm'r, T.C. Memo. 2017-143**.

IN THE NEWS

TAX RETURN PREPARER SCAMS. The IRS has warned tax professionals to be alert to a new phishing e-mail scam impersonating tax software providers and attempting to steal usernames and passwords. This sophisticated scam underscores the need for tax professionals to take strong security measures to protect their clients and protect their business. This is the time of year when many software providers issue software upgrades and when tax professionals are working to meet the Oct. 15 deadline for extension filers. This latest scam e-mail variation comes with a subject line of "Software Support Update" and highlights an "Important Software System Upgrade." It thanks recipients for continuing to trust the software provider to serve their tax preparation needs and mimics the software providers' e-mail templates. The e-mail informs the recipients that due to a recent software upgrade, the preparer must revalidate their login credentials. It provides a link to a fictitious website that mirrors the software provider's actual login page. Instead of upgrading software, the tax professionals are providing their information to cybercriminals who use the stolen credentials to access the preparers' accounts and to steal client information. The IRS Security Summit reminds tax professionals that software providers do not embed links into e-mails asking them to validate passwords. Also, tax professionals and taxpayers should never open a link or an attachment from a suspicious e-mail. Tax professionals can review additional tips to protect clients and themselves at *Protect Your Clients, Protect Yourself* on IRS.gov. **IR-2017-126**.